

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 20, 2011

Melissa Chao, Acting Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2011-0278-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between Aqua WSC and Manville WSC pursuant to Texas Water Code Section 13.248.

Dear Ms. Chao:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the original and seven copies of the following items as backup material for the June 8, 2011 agenda regarding the request described above. Though the agenda date is less than 23 days away, Todd Burkey of the Office of General Counsel has approved this late filing.

1. Proposed Order, with the Texas Water Code Section 13.248 contract attached to it;
2. Interoffice Memorandum containing an Executive Summary;
3. Application for a Commission order approving a Texas Water Code Section 13.248 contract filed on June 4, 2010;
4. Interoffice Memorandum containing analysis of Aqua WSC's financial, managerial, and technical capability;
5. Map of the area covered by the Agreement.
6. Map consents from the parties.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ruth A. Takeda".

Ruth A. Takeda, Staff Attorney
Environmental Law Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER APPROVING A CONTRACT DESIGNATING SERVICE AREAS BETWEEN AQUA WATER SUPPLY CORPORATION AND MANVILLE WATER SUPPLY CORPORATION PURSUANT TO TEXAS WATER CODE SECTION 13.248; TCEQ DOCKET NO. 2011-0278-UCR.

A request for a Commission Order approving a contract designating water service areas in Travis County between Aqua Water Supply Corporation (Aqua), Certificate of Convenience and Necessity (CCN) No. 10294, and Manville Water Supply Corporation (Manville), CCN No. 11144, was presented to the Texas Commission on Environmental Quality (Commission) for approval pursuant to Texas Water Code Section 13.248 and Title 30 of the Texas Administrative Code, Section 291.117.

Effective April 27, 2010, the Aqua and Manville executed a "Water CCN Transfer Agreement Between Aqua Water Supply Corporation and Manville Water Supply Corporation" (Contract) regarding their respective water service areas. The Contract addresses the transfer of Manville's authority to provide water service to approximately 29.2 acres and provides that Aqua will be the sole provider of retail water service in that service area. There are no facilities or customers in the area to be transferred. The Contract is attached to this Order as Exhibit 1. This Order effects changes in CCN service areas as designated by Aqua and Manville in the Contract.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. Texas Water Code Section 13.248.

The Commission held a hearing on the request at the June 8, 2011 agenda and found that the request had merit.

Aqua is capable of rendering continuous and adequate water service to every customer in the area covered by the Contract. The decertification of Manville's authority to provide service in the affected area, which results in Aqua being the sole service provider remaining in the area, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The provisions of the Contract addressing the transfer of a portion of Manville's CCN No. 11144, and designating that retail water service shall be provided by Aqua, CCN No. 10294, in that area are hereby approved.
2. CCN No. 10294 in Travis County, held by Aqua, is hereby amended in accordance with the Contract.
3. CCN No. 11144 in Travis County, held by Manville, is hereby amended in accordance with the Contract.
4. The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Contract and as set forth on the map attached to this Order as Exhibit 2, and to amend the Commission's official water service area map for Travis County, Texas. The certificate amendments requested in this application are necessary for the service, accommodation, convenience, and safety of the public.
5. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

WATER CCN TRANSFER AGREEMENT BETWEEN
AQUA WATER SUPPLY CORPORATION
AND
MANVILLE WATER SUPPLY CORPORATION

This Water CCN Transfer Agreement ("Agreement") is entered into effective as of the 27th day of April, 2010, by and between Aqua Water Supply Corporation ("Aqua"), a Texas nonprofit water supply corporation operating under Chapter 67 of the Texas Water Code and Manville Water Supply Corporation ("Manville"), a Texas nonprofit water supply corporation operating under Chapter 67 of the Texas Water Code, each acting by and through its undersigned, duly authorized representatives.

RECITALS

WHEREAS, Aqua has been issued water Certificate of Convenience ("CCN") No. 10294 ("Aqua's CCN") by the Texas Commission on Environmental Quality ("TCEQ") to provide retail water utility service to certain areas within Travis, Bastrop, Lee, Fayette and Caldwell Counties; and

WHEREAS, Manville has been issued water Certificate of Convenience No. 11144 ("Manville's CCN") by the TCEQ to provide retail water utility service to certain areas within Travis and Lee Counties; and

WHEREAS, New Sweden Municipal Utility District No. 2 (the "District") has been created and consists of 426.0 acres, the majority of such lands within the District being located within Aqua's CCN and approximately 61 acres of such lands being located within Manville's CCN; and

WHEREAS, on August 10, 2007 and with the consent of Manville, Aqua submitted an application to amend its CCN No. 10294 to add the 61 acre tract to Aqua's CCN;

WHEREAS, on February 28, 2008, the TCEQ provided Aqua with a consent form for Aqua's CCN amendment which consent form included a map showing the addition of the 61 acre tract; and

WHEREAS, the official TCEQ CCN map also reflected that a 300' by 3800' strip of land would remain in Manville's CCN which effectively separated the 61 acre tract from Aqua's CCN area; and

WHEREAS, it appears that this mapping anomaly is the result of the shape file for Aqua's current CCN being created from an imprecise map whereas CCN amendment for the 61 acre tract addition was created from a precise description and the two descriptions did not overlap;

Exhibit 1

RECEIVED
TCEQ WATER SUPPLY
2010 JUN 14
3:42

WHEREAS, the parties have agreed to adjust their respective CCN boundaries so that there is no gap between the two tracts within Aqua's CCN.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, Aqua and Manville agree as follows:

1. CCN Transfer. Subject to the approval of this Agreement by the TCEQ, Manville hereby transfers to Aqua, and Aqua hereby accepts, that certain 29.2 acre portion of Manville's CCN as shown on the map attached as Exhibit "A" (the "Transfer Area").

2. TCEQ Approval. After execution by the parties, a copy of this Agreement shall be filed with the TCEQ in accordance with Texas Water Code § 13.248. Aqua shall be primarily responsible for filing this Agreement with the TCEQ to effect the transfer and amendment of the Transfer Area described in paragraph 1 above and shall bear all costs related to same. Manville and Aqua will cooperate with each other and the TCEQ to accomplish the transfer and amendment of the Transfer Area described in paragraph 1 above.

3. Effect of Transfer. Upon approval of this Agreement by the TCEQ, the Transfer Area shall be within the water CCN of Aqua and Manville and the boundary between Aqua and Manville shall be adjusted as shown on Exhibit "B". The parties agree that upon such approval, Aqua will have the sole right to provide water utility service within the Transfer Area.

4. Customers in Transfer Area. The parties agree that as of the effective date of this Agreement that Manville has no water utility customers in the Transfer Area. The parties further agree that, between the Effective Date of this Agreement and the Transfer Effective Date, Manville will not serve any new customers in the Transfer Area.

5. Owners of Property in Transfer Area. It is the understanding of the parties that the owners of the property are familiar with the Transfer Area and it is their desire that the Transfer Area be included in Aqua's CCN. Aqua agrees to notify the owners of the property within the Transfer Area with notice that this Agreement has been filed with the TCEQ.

6. Facilities in Transfer Area. The parties agree that there is no transfer of facilities, waterlines, easements, or equipment under this Agreement.

7. Transfer Effective Date. The "Transfer Effective Date" shall be the date the TCEQ issues an order granting and/or approving the transfer and amendment of Aqua's CCN to include the Transfer Area described in paragraph 1 above.

8. Related Documents. The parties covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

9. Applicable Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

10. Performance. Except for matters within the jurisdiction of the TCEQ (or its successor), any action at law or in equity brought to enforce or interpret any provision of this Agreement shall be brought in a state court of competent jurisdiction with venue in Bastrop County, Texas.

11. Entire Agreement. This Agreement contains the entire agreement by and between Aqua and Manville with respect to the subject matter of this Agreement. No agreement, statement or promise made by any party to any other party, or by or to any employee, agent or officer of any party hereto, that is not contained in this Agreement shall be valid, binding or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties charged.

12. Successors and Assigns. This Agreement shall be binding upon the parties and their respective successors and assigns.

13. No Third Party Beneficiaries. It is the express intention of the parties that the terms and conditions of this Agreement may be enforced by either party, but not by any third party or alleged third-party beneficiary.

14. Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

15. Covenant of Authority. The undersigned hereby represent and covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

16. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS HEREOF, this Agreement is executed as of the ____ day of April, 2010 by Aqua Water Supply Corporation and Manville Water Supply Corporation under the authority of their respective governing bodies on the dates indicated below.

AQUA WATER SUPPLY CORPORATION

By: William E. Loven 4/27/10
William E. Loven, General Manager

MANVILLE WATER SUPPLY CORPORATION

By: Tony Graf
Tony Graf, General Manager

The map displays a complex network of land parcels, each identified by a unique numerical code. A prominent parcel, shaded with diagonal hatching, is labeled '29.20 a.c.' and is situated near a road labeled 'MAGNOLIE'. To the right of this parcel, a road is labeled 'MAGNOLIE 28.33.557'. A river or stream flows through the lower right portion of the map. The map is overlaid with a grid of dashed lines, and various other parcels are labeled with numbers such as '134 67 00 007', '134 67 00 008', '134 67 00 009', '134 67 00 010', '134 67 00 011', '134 67 00 012', '134 67 00 013', '134 67 00 014', '134 67 00 015', '134 67 00 016', '134 67 00 017', '134 67 00 018', '134 67 00 019', '134 67 00 020', '134 67 00 021', '134 67 00 022', '134 67 00 023', '134 67 00 024', '134 67 00 025', '134 67 00 026', '134 67 00 027', '134 67 00 028', '134 67 00 029', '134 67 00 030', '134 67 00 031', '134 67 00 032', '134 67 00 033', '134 67 00 034', '134 67 00 035', '134 67 00 036', '134 67 00 037', '134 67 00 038', '134 67 00 039', '134 67 00 040', '134 67 00 041', '134 67 00 042', '134 67 00 043', '134 67 00 044', '134 67 00 045', '134 67 00 046', '134 67 00 047', '134 67 00 048', '134 67 00 049', '134 67 00 050', '134 67 00 051', '134 67 00 052', '134 67 00 053', '134 67 00 054', '134 67 00 055', '134 67 00 056', '134 67 00 057', '134 67 00 058', '134 67 00 059', '134 67 00 060', '134 67 00 061', '134 67 00 062', '134 67 00 063', '134 67 00 064', '134 67 00 065', '134 67 00 066', '134 67 00 067', '134 67 00 068', '134 67 00 069', '134 67 00 070', '134 67 00 071', '134 67 00 072', '134 67 00 073', '134 67 00 074', '134 67 00 075', '134 67 00 076', '134 67 00 077', '134 67 00 078', '134 67 00 079', '134 67 00 080', '134 67 00 081', '134 67 00 082', '134 67 00 083', '134 67 00 084', '134 67 00 085', '134 67 00 086', '134 67 00 087', '134 67 00 088', '134 67 00 089', '134 67 00 090', '134 67 00 091', '134 67 00 092', '134 67 00 093', '134 67 00 094', '134 67 00 095', '134 67 00 096', '134 67 00 097', '134 67 00 098', '134 67 00 099', '134 67 00 100'. A scale bar at the bottom left indicates a distance of 1.5 km.

STEEGER • BIZZELL

The map displays the amended areas for two water supply contracts in Travis County, Texas. The area for Manville WSC (CCN 11144) is shown in the upper left, and the area for Aqua WSC (CCN 10294) is shown in the lower right. The map includes a scale bar indicating 1 inch equals 3,000 feet, a north arrow, and a title block with project information.

**Manville WSC
CCN 11144**

**Aqua WSC
CCN 10294**

**Amended Areas
in Travis County**

3000 0 3000 Feet

1 inch = 3,000 feet

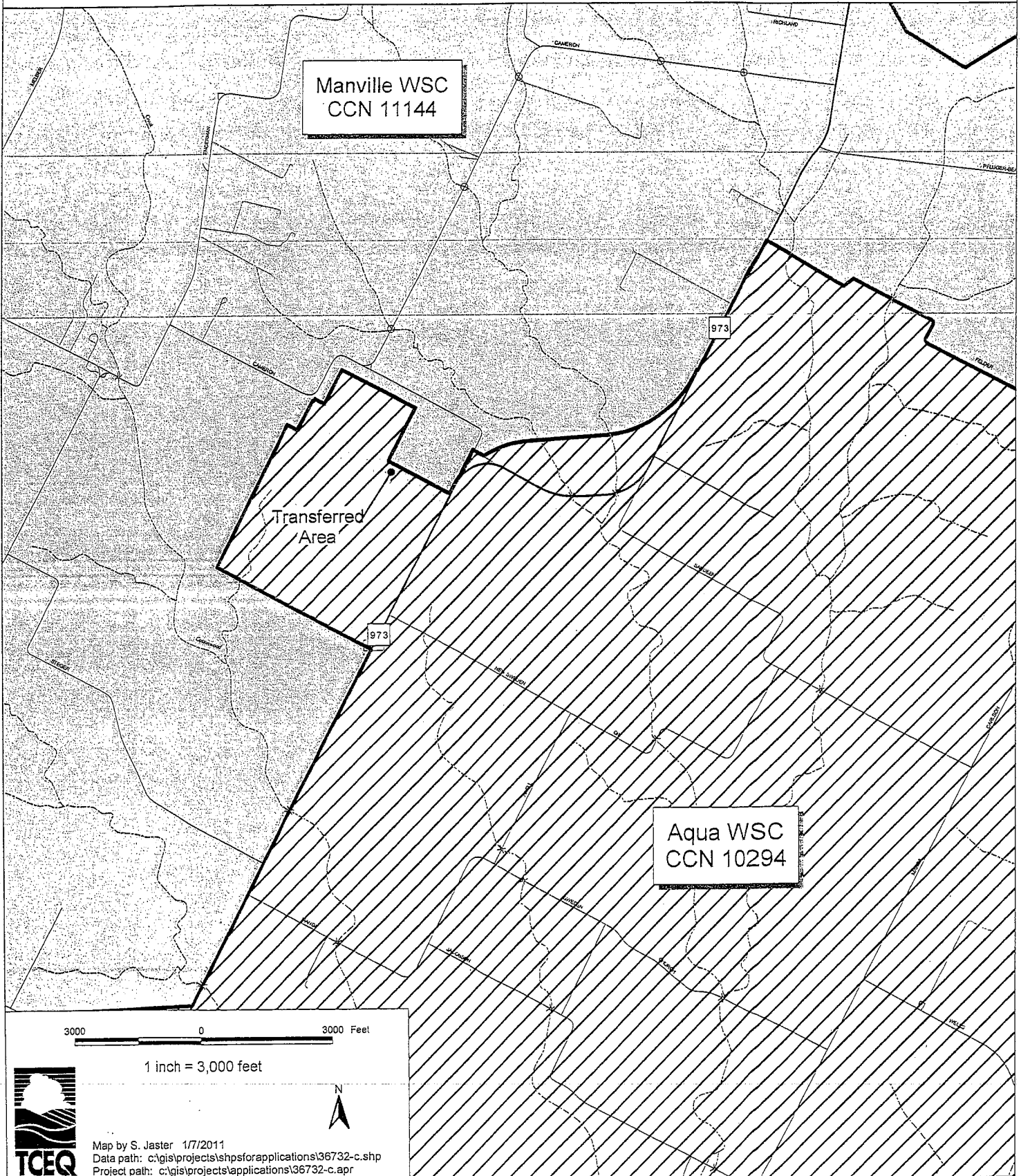
TCEQ

Map by S. Jaster 2/26/2008
Data path: c:\gis\projects\shpsforapplications\35779-c.shp
Project path: c:\gis\projects\applications\35779-c_2.apr



Exhibit 2

Aqua Water Supply Corporation
Portion of Water Service Area in Travis County
CCN No. 10294
Application No. 36732-C (13.248 Agreement to Transfer a Portion
from Manville WSC, CCN No. 11144, in Travis County)



**Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM**

DATE:	May 20, 2011
TO:	Texas Commission on Environmental Quality
THRU:	LaDonna Castañuela, Chief Clerk
FROM:	Ruth Takeda, Staff Attorney, Environmental Law Division
SUBJECT:	TCEQ Docket No. 2011-0278-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between Aqua WSC and Manville WSC pursuant to Texas Water Code Section 13.248.

DESCRIPTION OF APPLICATION

Applicants:

Aqua WSC and Manville WSC.

Regulated Activity:

Retail water service.

Type of Application:

Request for a Commission order approving a contract.

Commission Action:

Hearing regarding approval of the contract.

Authority:

Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117.

FACTUAL BACKGROUND

Aqua WSC (Aqua), certificate of convenience and necessity (CCN) No. 10294, and Manville WSC (Manville), CCN No. 11144, provide retail water service in counties that include Travis County, Texas. Effective April 27, 2010, Aqua and Manville entered into a "Water CCN Transfer Agreement Between Aqua Water Supply Corporation and Manville Water Supply Corporation" (Contract) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Manville is certificated in this service area. Under the Contract, Manville will transfer approximately 29.2 acres from its CCN No. 11144 to Aqua, thereby incorporating the area into Aqua's CCN No. 10294, and correcting a mapping anomaly involved in a prior 61 acre Aqua CCN amendment. Specifically, the map left a narrow strip of land measuring approximately

29.2 acres that separates the 61 acre tract from Aqua's CCN service area. According to the Contract, no customers or facilities in the area will be transferred.

Both Aqua and Manville have reviewed the CCN map to be issued with the Commission's order and have approved it.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.¹

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area contracts and have the Commission affirm the contracts by amending the entities' respective CCNs.² The request to approve a Section 13.248 contract is not subject to the notice provisions of Title 30, Section 291.106 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area contract pursuant to Section 13.248 of the Texas Water Code with appropriate notice provided under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Application No. 36732-C filed by Aqua and Manville on June 4, 2010 for a Commission Order approving the 13.248 contract;
2. Agreement between Aqua and Manville executed on or about April 27, 2010;
3. Analysis of Aqua's financial, managerial, and technical capability to operate in the affected area;
4. Map of the service area subject to the 13.248 agreement and map consents from the parties.

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon 2008).

² TEX. WATER CODE ANN. § 13.248 (Vernon 2008); 30 TEX. ADMIN. CODE § 291.117 (Supp. 2006) (Tex. Comm'n on Environ. Qual.). Section 13.248 states, "Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

STAFF RECOMMENDATION

Staff has confirmed that both parties are retail public utilities with active water CCNs, that the area the parties seek to transfer is currently certificated to Manville, and that no customers or facilities are being transferred. Further, staff is satisfied that Aqua possesses adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred. Aqua currently serves approximately 17,280 connections. Because of the following facts, staff conducted a limited financial review: the transfer is to correct CCN service areas; the area being transferred is less than 10% of the area in either Aqua's or Manville's CCN service area; a copy of the service agreement is included in the application; the transfer has no affect on either Aqua's or Manville's customers; and the transfer is immaterial to the overall financial and managerial operations of both Aqua and Manville.

Therefore, based on the facts stated in the application and the supporting documentation submitted by the applicants, staff supports the request for a Commission Order approving a contract designating service areas between Aqua and Manville.

STAFF CONTACTS

Ruth Takeda, Environmental Law Division (512.239.6635)
Sheresia Perryman, Water Supply Division (512.239.3654)

Mr. Lloyd's Direct Line: (512) 322-5805
Email: rlloyd@lglawfirm.com

June 3, 2010

Ms. Tammy Holguin-Benter
Texas Commission on Environmental Quality
Water Supply Division
Utilities & Districts Section, MC-153
P. O. Box 13087
Austin, Texas 78711-3087

RECEIVED
TCEQ WATER SUPPLY
2010 JUN -4 PM 3:41

Re: Water CCN Transfer Agreement Between Aqua Water Supply
Corporation and Manville Water Supply Corporation

Dear Ms. Benter:

Enclosed for filing are four (4) copies of the Water CCN Transfer Agreement Between Aqua Water Supply Corporation ("Aqua") and Manville Water Supply Corporation ("Manville") (the "Agreement"). Also attached is my firm's check in the amount of \$100.00 submitted as payment for the Application fees. Please file stamp one copy of the Agreement and return to me in the enclosed envelope so that we may have a copy for our records.

It has been some time since this issue was discussed with you and other representatives of the TCEQ so I am providing a short summary of the events leading to this Agreement. On August 10, 2007, Aqua submitted a CCN application (Application No. 35779-C) to clean up its CCN boundaries resulting from the realignment of FM 696 and FM 973, and to add a 61 acre tract of land located within New Sweden MUD No. 2. The 61 acre tract was located within Manville's CCN and Manville provided a letter stating it had no opposition to the 61 acre tract being located within Aqua's CCN.

When we received the consent form and proposed CCN map from TCEQ, a copy of which is enclosed as Attachment A, it was apparent that there was a problem with Aqua's CCN boundary. The map reflected a small strip of land between Aqua's CCN boundary and the 61 acre tract.

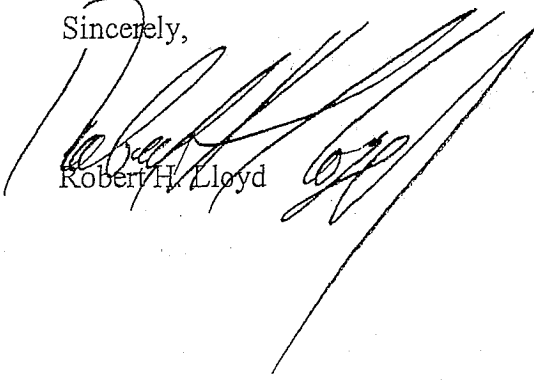
On March 31, 2008, I sent a letter to Lisa Fuentes requesting a meeting to discuss ways to resolve this boundary issue. A copy of the March 31 letter is enclosed as Attachment B. On April 10, 2008, a meeting was held at TCEQ with you, Doug Holcomb, Kent Steelman, Lisa Fuentes, Richard Hamala, John Burke, Debbie Fehrenkamp and me attending. At the meeting, it was determined that an agreement between Aqua and Manville pursuant to Section 13.248 of the Water Code would be the best way to correct the boundary issue.

Ms. Tammy Holguin-Benter
Texas Commission on Environmental Quality
June 3, 2010
Page 2

Since that meeting, development in the area slowed considerably and the provision of water service to the tract was delayed. Recently, there is renewed interest in the development of the property and the property owner has requested that this issue be resolved.

We look forward to working with you and your staff in the transfer of this small portion of property from Manville's CCN to the Aqua's CCN. Should you have any questions regarding this Agreement or need additional information, do not hesitate to contact me.

Sincerely,



Robert H. Lloyd

RHL/daf
1134601v1

Enclosures


cc: Mr. Karl Moeller
Mr. Richard Hamala
Mr. Bill Loven

TCEQ Interoffice Memorandum

To: Environmental Law Division

Date: December 28, 2010

Thru: Sheresia Perryman/Lisa Fuentes

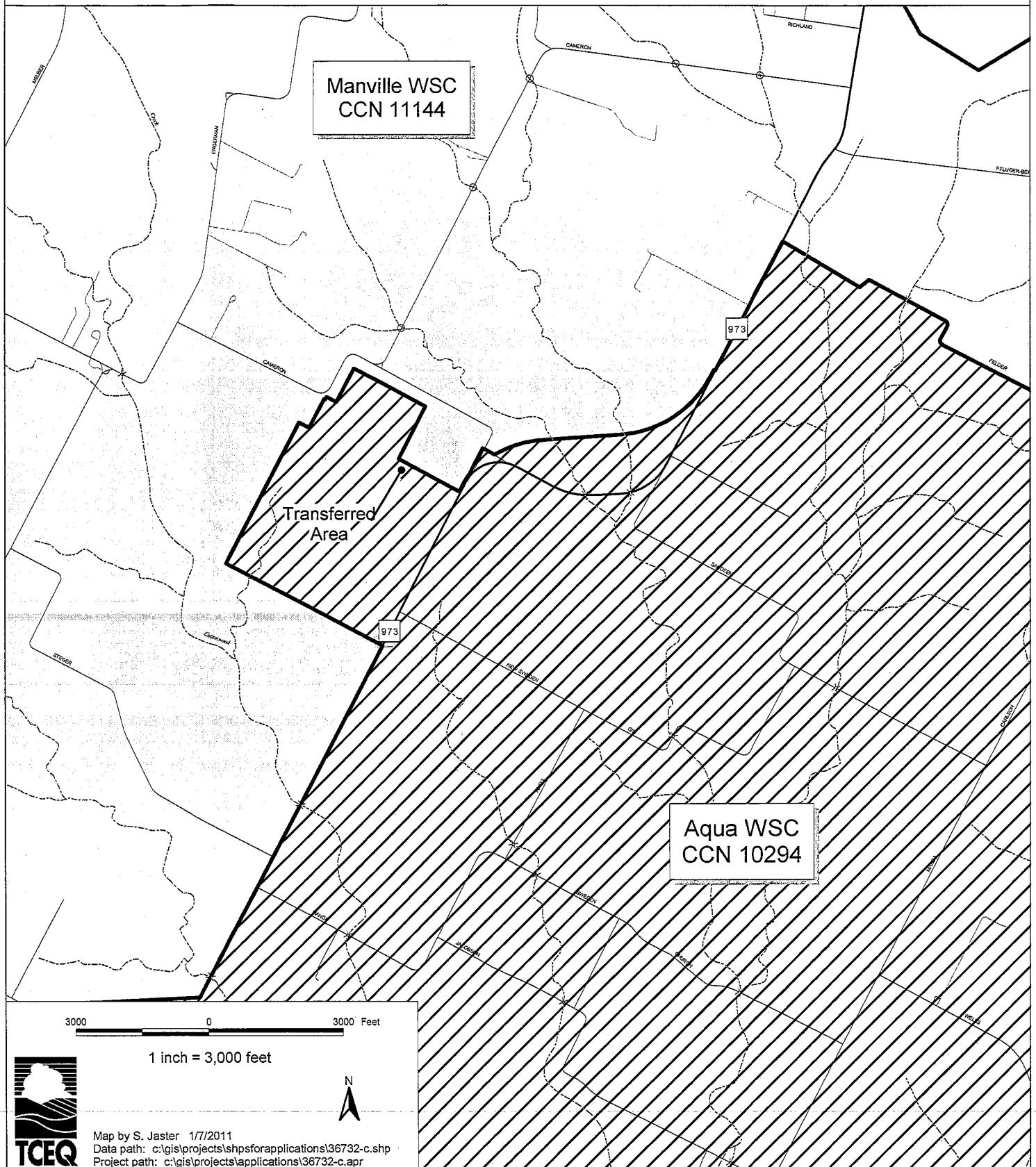
From:  Debi Loockerman C.P.A.

Subject: Contract Service Agreement Pursuant to Texas Water Code Section 13.248, from Aqua Water Supply Corporation (WSC), Certificate of Convenience and Necessity (CCN) No. 10294, to Transfer a Portion of CCN No. 11144 from Manville WSC in Lee and Travis Counties; Application No. 36732-C

CN: 600610828; RN: 102672482 (transferee/Aqua WSC)
CN: 600674121; RN: 101235505 (transferor/Manville WSC)

Aqua WSC applies to transfer 29.2 acres from Manville WSC to reflect correct service areas. A copy of the service agreement is in the application. The transfer has no affect on either entity's customers and is immaterial to the overall financial and managerial operations of both utilities. There area is less than 10% of the area in either affected CCN. Therefore, no further financial review is necessary in this case.

Aqua Water Supply Corporation
Portion of Water Service Area in Travis County
CCN No. 10294
Application No. 36732-C (13.248 Agreement to Transfer a Portion
from Manville WSC, CCN No. 11144, in Travis County)



Map by S. Jaster 1/7/2011
Data path: c:\gis\projects\shpsforapplications\36732-c.shp
Project path: c:\gis\projects\applications\36732-c.apr

CONSENT FORM

Applicant's Name: Aqua WSC
Application Nos.: 36732-C

- ☒ I concur with the recommendation contained in the staff memorandum transmitted by letter dated February 8, 2011.
- ☐ I do not concur with and intend to respond to the recommendation contained in the staff memorandum transmitted by letter dated February 8, 2011.

I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by Manville WSC to sign this form.

Signature: Karl H. Moeller

Printed Name: KARL H. MOELLER

Relationship to Applicant: ATTORNEY / GENERAL COUNSEL

Date signed: Feb 11 2011

Mail or Fax to:
Sheresia Perryman
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6972

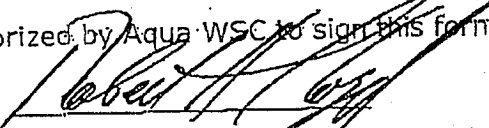
CONSENT FORM

Applicant's Name: Aqua WSC
Application Nos.: 36732-C

- ☒ I concur with the recommendation contained in the staff memorandum transmitted by letter dated February 8, 2011.
- ☐ I do not concur with and intend to respond to the recommendation contained in the staff memorandum transmitted by letter dated February 8, 2011.

I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by Aqua WSC to sign this form.

Signature: 

Printed Name: Robert H. Lloyd

Relationship to Applicant: Attorney for Aqua WSC

Date signed: February 17, 2011

Mail or Fax to:
Sheresia Perryman
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6972